

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 5

RULES RELATING TO THE HAWAII EMPLOYMENT SECURITY LAW,
CHAPTER 383, HAWAII REVISED STATUTES

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§12-5-1 Definitions. For the purposes of this chapter, unless the context clearly requires otherwise:

"Base period" shall be as defined in section 383-1, Hawaii Revised Statutes, except that where the individual established a valid claim using the alternative base period as provided in section 383-29(a)(5)(C), Hawaii Revised Statutes, the base period shall be the "alternative base period" as defined in section 383-1, Hawaii Revised Statutes;

"Full-time" means a forty-hour work week unless regarded otherwise according to the standard practice, custom or agreement in a particular trade, occupation, or business;

"Physician" shall be as defined in section 386-1, Hawaii Revised Statutes;

"Wages" shall be as defined in section 383-10;

"Week" means a period of seven consecutive calendar days commencing with Sunday and ending at midnight the following Saturday, except that a week of unemployment of an individual who has performed less than full-time work for that individual's regular employer may be deemed to begin with the first day of the individual's established pay period, upon showing by the employer that submission of low earnings report as required by section 12-5-17(h) for periods other than established payroll weeks would be unduly burdensome; [Eff. 6/26/81; am 3/10/86; am 9/23/89; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-1, 383-22, 383-29, 383-30, 383-33, 383-34, 383-44, 383-62, 383-70, 383-94)

§12-5-2. Master and servant relationship. (a) Services are deemed to be in employment if sections 383-2 and 383-10, Hawaii Revised Statutes, are satisfied, unless and until it is shown to the satisfaction of the department that all of the three-fold conditions or "ABC" test under section 383-6, Hawaii Revised Statutes, are met. In applying section 383-6, Hawaii Revised Statutes, to an individual's services, the following definitions shall apply:

- (1) "Contract of hire" is a written or oral, express or implied, agreement between two or more individuals which creates an obligation to do or not to do a particular thing and where such agreement demonstrates a promise of wages for services performed.
- (2) "Control or direction over the performance of such service" means general control and need not extend to all details of the performance of service. The employer need not actually exercise control; it is sufficient that there is a right to do so.
- (3) (A) "Outside the usual course of the business" refers to services that do not promote or advance the business of the employer, or services that are merely incidental to, and not an integral part of, that business.
 (B) "Outside of all the places of business of the enterprise" refers to places other than the business's home office, headquarters or territory in which the business operates;
- (4) "The individual is customarily engaged in an independently established trade, occupation, profession, or business" refers to an individual who is performing services and is established in the business of performing these services independent of whatever connection the individual may have with an employer and that the individual must have a proprietary interest in such business, something in which the individual has a right of continuity, which the individual can sell or give away, and which is not subject to cancellation or destruction upon severance of the relationship with the employer.

(b) As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors set forth below are designed only as guides for determining whether an individual is an employee and the degree

of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

- (1) The employer for whom services are being performed requires the individual to comply with instructions regarding when, where, and how services are performed;
- (2) The employer for whom services are being performed requires particular training for the individual performing services;
- (3) The services provided by the individual are part of the regular business of the employer for whom services are being performed;
- (4) The employer for whom services are being performed requires the services be performed by the individual;
- (5) The employer for whom services are being performed hires, supervises or pays the wages of the individual performing services;
- (6) The existence of a continuing relationship between the employer for whom services are being performed with the individual performing services which contemplates continuing or recurring work, even if not full-time;
- (7) The employer for whom services are being performed requires set hours during which services are to be performed;
- (8) The employer for whom services are being performed requires the individual to devote substantially full-time to its business;
- (9) The employer for whom services are being performed requires the individual to perform work on its premises;
- (10) The employer for whom services are being performed requires the individual to follow a set order or sequence of work;
- (11) The employer for whom services are being performed requires the individual to make oral or written progress reports;
- (12) The employer for whom services are being performed pays the individual on a regular basis such as hourly, weekly or monthly;
- (13) The employer for whom services are being performed pays expenses for the individual performing services;
- (14) The employer for whom services are being performed furnishes tools, materials, and other equipment for use by the individual;
- (15) There is a lack of investment in the facilities used to perform services by the individual;

- (16) There is a lack of profit or loss to the individual as a result of the performance of such services;
- (17) The individual is not performing services for a number of employers at the same time;
- (18) The individual does not make such services available to the general public;
- (19) The employer for whom services are being performed has a right to discharge the individual;
- (20) The individual has the right to end the relationship with the employer for whom services are being performed without incurring liability pursuant to an employment contract or agreement.

[Eff. 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-2, 383-6, 383-11)

§12-5-17 Reports. (g) Wage and separation reports shall be submitted as follows:

- (1) Employers shall furnish wage or separation information, or both, when requested by the department within five calendar days from the date the request was mailed to the employer. The information requested shall include:
 - (A) The name and address of the employer;
 - (B) The employer's unemployment insurance account number;
 - (C) The first and last name of the employee;
 - (D) The employee's social security account number;
 - (E) The employee's occupation;
 - (F) The period or periods of employment, including beginning and ending dates;
 - (G) The wages paid during the last five completed calendar quarters, and wages paid during the quarter in which the separation occurred;
 - (H) The reasons for separation; and
 - (I) Such other relevant and reasonable information as requested by the department.
- (2) If an employer fails to furnish the department with the wage and separation information within five calendar days from the date the request was mailed to the employer, the employer shall pay a penalty of \$10.
- (3) The employer shall submit a timely, complete, and accurate report when the department requests submission of such report. If an employer fails to submit the requested information within the time stated, the department may make a determination of an individual's insured status and eligibility for benefits based upon the individual's evidence of employment and reason for separation. If the late or corrected wage and separation report is received after the determination has been made, any redetermination which may be made necessary by the information in the report shall be effective only as to benefits paid after the week in which the report was received. If prior to the week of redetermination, the individual received benefits to which the individual would not have been entitled had the employer filed a timely, complete, and accurate report, that amount, in the absence of fraud, shall not be recoverable from the individual but shall be chargeable to the individual's redetermined maximum benefit amount. Any benefits

overpaid to an individual prior to the effective date of a redetermination as a result of late reporting shall be charged entirely against the account of the employer whose report was late, except where the department finds the late reporting is excusable. If an overpayment results from late reporting by more than one employer, where the department finds that the late reporting is not excusable, the department shall apportion the charges therefor against the accounts of such employers on a pro rata basis.

- (4) Paragraphs (1) to (3) shall apply to wage or separation information when requested by the department using other alternative methods as instructed by the department, including but not limited to telephone, fax, or electronic mail.
- (h) Low earnings reports shall be submitted as follows:
 - (1) Whenever, during any weekly pay period in an individual's benefit year, an individual has worked less than full-time hours of the establishment at which the individual is employed, and the individual's earnings are less than the individual's current weekly benefit amount, the individual's employer shall, upon request by the department:
 - (A) Enter such individual's name, social security account number, gross earnings, week-ending date, and the reasons for the individual's reduced work week on a list form provided or approved by the department and return such form to the unemployment insurance office as instructed within five working days after the notice of an individual's benefit amount has been mailed to the employer as to all prior weeks for which benefits are claimed. Thereafter, during the benefit year, the employer shall report within five working days after the end of each week or weekly pay period for which such low earnings reports are required; or
 - (B) Furnish the individual personally with such information on a form provided or approved by the department and the individual shall be responsible to submit such report to the unemployment office within five working days

after the end of each week or weekly pay period or as instructed by the department.

- (2) If the employer fails to submit the low earnings report in the manner prescribed in (A) or (B) within the time specified by the department, the department shall determine the individual's eligibility for any week benefits are claimed based on the individual's certification of employment and earnings. [Eff. 6/26/81; am 8/5/88; am 9/23/89; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-33, 383-65, 383-70, 383-94)

§12-5-23 Noncharges for benefits. (a) Employment and wages which have been used for a determination of benefits which establishes a benefit year shall not thereafter be used as the basis for another monetary determination of benefits, except where amendments to chapter 383, Hawaii Revised Statutes, affect the method of computing base periods or otherwise require reuse of base period wages. Where reuse of base period wages is authorized, benefit costs attributable to wages used in a previous benefit year that are available for a second benefit year shall not be charged against the account of any base period employer.

(b) The noncharge provided in section 383-65(b)(2), Hawaii Revised Statutes, shall apply only if all of the following conditions are satisfied:

- (1) The part-time employment provided by the employer continues uninterrupted from the base period to the period during which the individual is receiving benefits; and
- (2) The individual worked or could have worked substantially the same number of hours each pay period at gross wages which equal or exceed the average gross wages per pay period in the base period.
- (3) The employer shall provide whatever information is reasonable and necessary for the department to determine if each of the above conditions is satisfied. [Eff. 9/23/89; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-1, 383-65)

§12-5-31 Registration. (a) An individual shall be deemed to have registered for work, as required by section 383-29(a)(2), Hawaii Revised Statutes, if the individual has an active registration for work with an employment office in the local community in which the individual is seeking work or, if prior to or within seven calendar days after applying for benefits or as instructed by the department, the individual registers at an employment office or such other place as the department may approve and completes registration procedures as authorized by the department.

(b) The registration may be waived for individuals who are:

- (1) Deemed partially unemployed; or
- (2) Union members in good standing and who are being referred to jobs through their union job placement service; provided that the union agrees to report to the department all individuals who refuse job referrals or offers of work and all individuals not ready, willing, and able to work, and the union is approved by the department for the purpose of waiving registration; or
- (3) Involved in a labor dispute and for whom an employer-employee relationship continues to exist; or
- (4) Suspended from work and for whom an employer-employee relationship continues to exist, provided that the waiver shall apply only to the period of the suspension but not to exceed more than four consecutive weeks of unemployment immediately following the week in which the individual has been suspended.

(c) "Registered for work" as used in section 383-29(a)(2), Hawaii Revised Statutes, means that individuals shall provide information to the employment office to be posted on the department's internet job-matching system, including but not limited to: name, job skills, education, training, prior employment history and work duties, preferred working conditions, occupational licenses and other relevant occupational information to facilitate work search efforts by individuals and increase job referrals by the employment office. The information shall be posted with the department's assistance or independently by the individual. The employment office shall provide the necessary information to the unemployment office for purposes of determining that

the individual's "registered for work" requirement has been met.

Benefits shall be denied in accordance with section 383-29(a)(2), Hawaii Revised Statutes, for any week with respect to which it is found that the individual failed to register for work for each day of such week and continuing until the conditions of this subsection are met. [Eff. 6/26/81; am 11/6/06](Auth: HRS §§383-29(a)(2), 383-92)(Imp: HRS §383-29(a)(2))

§12-5-35 Availability. (a) An individual shall be deemed able and available for work within the meaning of section 383-29(a)(3), Hawaii Revised Statutes, if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed.

- (1) An individual shall be deemed able to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which the individual is reasonably fitted by training and experience.
- (2) An individual shall be deemed available for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment.
- (3) Notwithstanding any provisions of this subsection to the contrary, an individual who meets the definition of part-total unemployment under section 12-5-1 may be considered available for work in situations where the individual did not accept an offer of part-time work from an employer:
 - (A) If the offer of part-time work was not in the individual's customary occupation or in the occupation that the individual is seeking full-time employment, and the individual was otherwise available for employment during the normal work week in the individual's customary occupation or in the occupation that the individual is seeking full-time employment;
 - (B) Due to a work schedule conflict with another employer; or
 - (C) Due to lack of sufficient advance notice of a work schedule change.

(b) The individual must be willing to accept the wages and hours and days of employment that are prevailing or customary in the community in which the individual is seeking work. The individual must be available in a labor market area where there is a reasonable demand for the individual's services. The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work. An individual shall use any

reasonable and available means of transportation, including public transportation and means of transportation customarily employed by persons in the individual's community. All individuals claiming benefits shall make personal efforts to find work as are customarily made by persons in the same occupation who are genuinely interested in obtaining employment. An individual shall use the facilities and methods which are normally used by persons in that person's occupation when seeking work. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to:

- (1) Seek work in some other occupation for which the individual is reasonably fitted by training and experience and in which vacancies exist; or
- (2) Lower the individual's wage demands; or
- (3) Broaden the geographical area in which the individual will accept work; or
- (4) Accept counseling for possible retraining or a change in occupation.

The above alternative shall be considered in light of the improving or deteriorating state of the economy of the individual's labor market area, the existing and reasonably foreseeable level of demand in the various occupations for which the individual is reasonably fitted, the wages being offered at that time, and other similar factors.

(c) An individual may be considered available for work for any week in which the individual has met the work search requirements of this section.

- (1) The individual shall make a minimum of three work search contacts each week, unless otherwise provided in this subsection.
- (2) The individual shall maintain a record of all work search contacts and may be required to submit such record upon request by the department.
- (3) Activities that constitute work search contacts, include but are not limited to:
 - (A) Registering for work at the employment office in accordance with section 383-29(a)(2), Hawaii Revised Statutes;
 - (B) Registering for work with a private employment agency or placement facility of a school, college or university;
 - (C) Applying for work, submitting resumes or interviewing with potential employers;

- (D) Utilizing employment resources available at employment offices that identify the individual's skills in occupations in demand in the local labor market area;
 - (E) Attending job search seminars, job clubs, or other employment workshops that offer instruction in improving an individual's skills for seeking and obtaining employment; and
 - (F) Conducting other work search activities which are made by individuals in the same or similar occupation who are genuinely interested in obtaining work or as may be provided by the department.
- (4) An individual shall be exempted from the work search requirements of this subsection, or be subject to modified work search requirements as authorized by the department if the individual:
- (A) is waived from registration for work requirements under section 12-5-31;
 - (B) is participating in approved training under section 383-29(e), Hawaii Revised Statutes;
 - (C) has otherwise been instructed by the department to be conducting work search activities in a manner consistent with and reflective of local area policies and local labor market opportunities; or
 - (D) for any other reason that has been determined by the department to meet work search requirements that are consistent with industry practices or are customary for the occupation.
- (5) An individual who fails to comply with the requirements of this subsection may be considered not available for work and be held ineligible for benefits.

(d) For the waiver, due to illness or disability, of the availability requirement of section 383-29(a)(3), Hawaii Revised Statutes, to apply, an individual shall have registered for work, as provided by law and this chapter, prior to the onset of the illness or disability, and shall have filed an initial claim to establish that individual's eligibility for benefits prior to the beginning of the illness or disability. Illness or disability shall be evidenced by a physician's certificate.

If the incapacitated individual is offered work which would have been suitable prior to the individual's illness or disability and the individual cannot accept such work because of

the individual's illness or disability, the waiver shall not apply.

"Offered work" as used in this subsection means a direct offer of work by an employer or employer's authorized representative, or referral to a job or a call-in made by the employment office for purposes of referral to suitable work.

(e) Notwithstanding any other provisions in this section, an individual shall not be deemed able and available for work during any week with respect to which the individual is receiving or has received compensation for temporary partial or temporary total disability under the workers' compensation law of any state. [Eff. 6/26/81; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §383-29(a)(3))

§12-5-39 Denial of benefits to employees of educational institutions and governmental agencies during specific periods.

(a) As used in section 383-29(b), Hawaii Revised Statutes, and this section:

- (1) Individuals employed in an "instructional" capacity include persons engaged in teaching students in formal classrooms, and individuals who teach in less formal arrangements, such as tutorial relationships and direction of students in independent research and learning;
- (2) Individuals employed in a "research" capacity include those who direct a research project and the staff directly engaged in gathering, correlating, and evaluating information and making findings. The individuals who provide supportive services for the research, such as typists, clerks, and electricians engaged in wiring the information processing equipment under the direction of the research staff, are not included in this term;
- (3) Individuals employed in a "principal administrative" capacity include officers of the institution (such as the president), the board of directors, business managers, deans, associate deans, public relations directors, comptrollers, development officers, chief librarians, registrars, and individuals who, although they may lack official titles, actually perform in similar functions. The duties performed by the individual rather than the title that person holds shall determine whether or not that person is included in this term;
- (4) "Service in any other capacity" includes all other services performed by employees of an educational institution or governmental agency such as the school secretary, office clerical staff, school lunch aides, cafeteria workers, school health aides, school security aides, and individuals who provide supportive services;
- (5) "Professional capacity" includes the individuals engaged in instructional, research, and principal administrative capacities;
- (6) "Nonprofessional capacity" includes the individuals engaged in performing "services in any other capacity" in an educational institution or governmental agency;

- (7) "Institution of education" means an institution that:
- (A) Offers an organized course of study or training designed to transfer knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher to participants, trainees, or students. Such course of study or training may be academic, technical, trade, or preparation for gainful employment in a recognized occupation; and
 - (B) Is approved, licensed or issued a permit to operate as a school by the State Department of Education, Board of Education, or other government agency that is authorized within the State to approve, license or issue permits for the operation of schools such as private, public, profit making, and non-profit institutions, whether the institutions are pre-schools, primary schools, secondary schools, preparatory or vocational schools, colleges, universities, junior or community colleges, or similar institutions within or without the State;
- (8) "Sabbatical leave" includes any paid leave whether for professional improvement or other leave, where both the leave and the individual's resumption of work upon termination of the leave are provided for in the contract;
- (9) "Established and customary vacation or recess for a holiday" includes the Christmas or spring break, or similar periods within an academic year or term, when that period has been placed on the school calendar for that school year;
- (10) "Governmental agency," as used in this section and section 383-29(b), Hawaii Revised Statutes, includes an educational service agency and any federal, state, county, or other type of governmental agency which is established and operated exclusively for the purpose of providing instructional, research, or principal administrative services, or any other services to one or more educational institutions;

- (11) The "contract" which an individual has with an institution of education or governmental agency may be written, oral, implied, or expressed. In some cases, the contract may be merely a notice of appointment or reappointment or a letter indicating that the individual's services have been accepted. Generally, as long as there is a mutual commitment between an individual and a particular institution, the individual's services shall be considered covered by a contract;
- (12) "Reasonable assurance" means a written, oral, implied agreement that the individual will perform services or provides the individual with a realistic expectation of employment in an institution of education or governmental agency in an instructional, research, principal administrative, or any other capacity during the ensuing academic year or term. Notification from the institution of education or governmental agency to the individual of reemployment for the next academic year or term shall constitute reasonable assurance, provided there are sufficient facts to show that the individual can realistically expect to be reemployed during the ensuing academic year or term, including, but not limited to:
 - (A) The existence of a job opening;
 - (B) The nature and effect of any factors, such as:
 - (i) Future enrollment;
 - (ii) Availability of funding;
 - (iii) Vacancies due to absences of regular employees; or
 - (iv) The individual's past employment with an institution of education or governmental agency;
 - (C) The employer's practice or procedure in assignment and offering work to its employees; and
 - (D) Any other factors to be considered in determining realistic expectation for reemployment; and
- (13) "Opportunity to perform such services" means an actual chance to perform these services for an institution of education or a governmental agency in the academic year or the term that follows. The offer shall specify the conditions under

which the offer of work was made to the individual and upon which reasonable assurance was previously given. If it is established that the offer was not bona fide, as may be indicated by a dismissal shortly after the individual begins performance of the required service, the individual may be eligible for retroactive payment of benefits.

(b) When an initial claim is filed by an individual, the institution of education or governmental agency shall provide the department with a statement as to whether or not reasonable assurance of employment has been given to the individual for the ensuing academic year or term and specific facts in support of the reasonable assurance, such as:

- (1) The conditions of prospective work, including:
 - (A) Job title;
 - (B) The duties;
 - (C) The hours of work;
 - (D) The salary; and
 - (E) The dates of employment; and
- (2) Any other information necessary for a proper determination of a claim for benefits.

(c) If it has been determined by the department that a denial is applicable under section 383-29(b), Hawaii Revised Statutes, benefits shall not be paid during:

- (1) The interval between two successive academic years, such as the summer vacation period;
- (2) Any period or term within an institution's academic year which occurs between two regular terms, whether or not successive, and during which the individual is not required to perform services in a professional capacity. For example, in the case of an individual whose contracts for each of two twelve-month periods require that individual to teach during the spring, summer, and winter terms in an institution with a four-term academic year and do not require that individual to perform such services during the intervening fall term, no benefits may be paid to that individual during the fall term. The fall term would be the period "between two regular terms, whether or not successive";
- (3) Sabbatical leave;

- (4) The period between the end of the sabbatical leave and the beginning of the next academic year or term, and the period between the end of the preceding academic year or term and the beginning of the sabbatical leave;
- (5) An established and customary vacation or recess for a holiday which falls within an academic year or term; or
- (6) Any period during an established and customary vacation or recess for a holiday within an academic term when an employee in an educational institution working in one capacity receives reasonable assurance of continued employment in another capacity after the established and customary vacation or recess for a holiday within the academic term. For example, if an individual performed services in a professional capacity in the academic period prior to the established and customary vacation or recess for a holiday for an educational institution and will be returning to an educational institution in a nonprofessional capacity in the academic period following the established and customary vacation or recess for a holiday, the denial would apply.

(d) The denial of benefits shall not apply during the applicable period between two academic terms or during an established or customary vacation or recess for a holiday period:

- (1) If the individual performed services in an institution of education or governmental agency in the first academic period and has a contract or reasonable assurance of employment with a different type of employer in the ensuing academic period. The denial would not apply, for example, where an individual was employed by an educational institution in the first academic period and accepted employment with a governmental agency or a non-educational employer in the second academic period; or
- (2) If the individual has wages from other covered employment and meets all eligibility requirements. The individual may be paid benefits for the periods between academic years, terms or semesters, or within academic periods based on the individual's covered wages from

employers other than an institution of education or governmental agency; or

- (3) If the economic terms and conditions of the job offered in the second period are substantially less than the terms and conditions for the job in the first period. The denial would apply, for example, where a full-time teacher is offered a one-year contract as a long-term substitute teacher at the same rate of pay and daily employment is guaranteed for the term of the contract. The denial would not apply, for example, where a full-time teacher during the first academic year is offered a contract to teach only one hour per day or is placed on the on-call list during the second academic year. [Eff. 6/26/81; am 12/31/84; am 9/23/89; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §383-29(b))

§12-5-47 Voluntary separation. (c) Generally, a leaving of work is considered to be for good cause where it is for a real, substantial, or compelling reason, or a reason which would cause a reasonable and prudent worker, genuinely and sincerely desirous of maintaining employment, to take similar action. Such a worker is expected to try reasonable alternatives before terminating the employment relationship.

Good cause for leaving employment may be found where there is:

- (1) Change in working conditions and the change is prejudicial or detrimental to the health, safety, or morals of the individual;
- (2) Change in terms and conditions of employment, including, but not limited to: change in rate of pay, position or grade, duties, days of work, or hours of work;
- (3) Discrimination which violates federal or state laws regarding equal employment opportunity practices;
- (4) Change in the individual's marital or domestic status;
- (5) Acceptance of a definite, firm offer made of other employment where the offer is subsequently withdrawn and the former employer refuses to rehire the individual;
- (6) Retirement under a mandatory requirement imposed by a collective bargaining agreement;
- (7) Evidence that the individual was a victim of domestic or sexual violence, including any circumstance which causes a reasonable person to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the individual and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Such evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the individual's attorney or advocate, a member of the clergy, medical or other professional from whom the individual has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this

subsection, "domestic or sexual violence"
includes domestic abuse, sexual assault, or
stalking; or

- (8) Any other factor relevant to a determination of
good cause. [Eff. 6/26/81; am 12/31/84; am
11/6/06](Auth: HRS §383-92)(Imp: HRS §393-30(1))

§12-5-81 Filing of claims. (a) A new claim may be filed by any individual who has become totally, part-totally, or partially unemployed. The new claim shall be filed in person, by mail, by telephone, or by using other alternative claims filing procedures as instructed or authorized by the department and in the manner prescribed by the department.

(b) The effective date of a claim for benefits shall be the first day of the week in which the claim is filed, except as otherwise provided in this section. The department may apply an earlier effective date if it can be shown to the satisfaction of the department that the individual's delay in filing is excusable for good cause, including but not limited to a reasonable misunderstanding by the individual, misinformation from the department, unavailability of acceptable methods of claims filing provided by the department, or for transitional claims which are effective the day after the prior benefit year ends.

(c) For partially unemployed individuals, a new claim may be taken within twenty-eight days from the week ending date of the first week of partial unemployment for which the claim is filed, provided, an individual shall not be required to file a claim earlier than two weeks from the date wages are paid for the claim period.

(d) The individual shall present, upon request, identification issued by a governmental agency which displays a photograph of the individual's face, the individual's signature, and the individual's social security account number, unless this requirement is waived by the department. If this identification is not available to the individual, the individual shall secure identification or submit to such reasonable identification procedures as the department may require, such as a notarized document attesting to the identity of the individual. If an individual fails or refuses to provide identification required in this subsection, the department may refuse to take action upon the individual's application, and unless proper identification is provided within two weeks, a determination to deny from the effective date of the initial claim shall be issued.

(e) Continued claim certification for total or part-total unemployment benefits shall be filed as follows:

- (1) An individual may file a continued claim certification for the purpose of satisfying the

waiting period requirement, or claiming benefits for a compensable week by certifying that:

- (A) The individual was unemployed during the week for which the claim is filed;
 - (B) The individual has earned no wages except as stated;
 - (C) The individual was able to work and available for work;
 - (D) The individual has not refused a job referral or offer of work; and
 - (E) The individual shall provide such other relevant information as the department may require.
- (2) An individual shall file a continued claim certification in person, by mail, by telephone or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department.
 - (3) The individual shall file continued claim certifications weekly or bi-weekly in accordance with paragraph (2). When deemed necessary by the department, the individual shall file continued claim certifications at such other intervals as the department shall require.
 - (4) The continued claim certification shall be filed in the manner prescribed by the department not later than seven calendar days following the last day of the week, or the last day of the two-week period in the case of bi-weekly filing intervals, for which benefits or waiting week credit is claimed. For continued claims filed by mail, the postmark date of the envelope in which the claim was mailed shall determine the date of filing. For continued claim certifications filed by telephone, the date that the telephonic transaction was completed by the individual and accepted by the remote claims taking system shall determine the date of filing. The department may extend the time allowed for filing a continued claim certification if the failure to file the claim certification within the time allowed is excused for good cause as determined by the department. Good cause includes but is not limited to:
 - (A) Incapacitation of the individual; or
 - (B) Failure to understand filing requirements.

- (5) If an individual fails to file continued claim certifications for benefits for two or more consecutive weeks in the manner prescribed by paragraph (4), the individual shall be required to file a reopened claim in the same manner prescribed by subsections (a) and (b) for new claims.
- (6) The department, upon showing of convenience or necessity, may transfer the individual to the office of the unemployment insurance division which has jurisdiction over the area in which the individual resides.
- (7) Individuals who temporarily leave the area in which they are currently filing for benefits and registered for work may file for not more than two consecutive weeks of benefits by telephone or by reporting in person to an unemployment insurance claims office serving the new area. The continued claims for benefits shall comply with the requirements in this subsection. If the individual remains in the new area for a longer period of time, an initial interstate claim should be filed. However, the requirements of this subsection may not apply if the individual is instructed or authorized to do otherwise by the department or the unemployment insurance claims office in the new area.

Failure to comply with this subsection, including the failure to provide relevant information as required, shall be considered a failure to file claims in accordance with section 383-29(a)(1), Hawaii Revised Statutes. Benefits shall be denied for the week in which the individual's failure to file occurs and continuing until the conditions of this subsection are met.

(f) Additional claims for total and part-total benefits shall be filed as follows:

- (1) After a series of claims for consecutive weeks of unemployment is broken by the employment of the individual, the individual, upon subsequent unemployment during the remainder of the benefit year previously established, shall file an additional claim in the manner prescribed by section 12-5-81(a) and (b) in order to begin a new series of claims, provided the unemployment is not partial unemployment.
- (2) To file an additional claim, an individual shall:

- (A) On the date the additional claim is filed, be unemployed and have separated from work;
 - (B) Be registered for work as prescribed by section 12-5-31;
 - (C) Complete and file with the department an additional claim form unless otherwise instructed or authorized by the department in accordance with section 12-5-81(a) and (b); and
 - (D) Furnish such information as the department may require.
- (g) Continued claim certifications for partial benefits shall be filed as follows:
- (1) An individual may file a continued claim certification for partial benefits in person, by mail, by telephone or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department with respect to each week of the individual's partial unemployment. A continued claim certification shall be filed in the same manner as prescribed in section 12-5-81(e)(1) not later than twenty-eight days from the end of the week for which the individual claims benefits; provided an individual shall not be required to file a continued claim certification earlier than two weeks from the date wages are paid for a claim period.
 - (2) If, after a week of partial unemployment, four or fewer consecutive weeks of total unemployment follow the week of partial unemployment, the weeks of total unemployment may be deemed weeks of partial unemployment. However, if total unemployment extends beyond four consecutive weeks, the individual shall be deemed totally unemployed.
 - (3) Notwithstanding paragraph (2), the department may extend partial unemployment beyond four consecutive weeks of total unemployment under conditions including but not limited to:
 - (A) The individual is retained in an employer-employee relationship; and
 - (B) The individual is under obligation to reserve services for the employer; and
 - (C) The individual has a definite or reasonably imminent return to work date.

(h) The initial claims of individuals who are affected by a mass separation may be taken as a group by the department. The term "mass separation" means a separation (permanently or for an indefinite period or for an expected duration of seven or more days) of fifty or more workers, employed in a single establishment, at or about the same time and for the same reason whether or not there is a severance of the employment relationship.

(i) An individual shall report in person as requested or provide information by mail, by telephone or as instructed by the department, to an office of the unemployment insurance division, to an itinerant point, or to a designated agency as instructed at such days and hours as required by the department for any of the following purposes:

- (1) Attending an eligibility benefit rights interview, unless the individual has waived, in writing and with the permission of the department, attendance at the interview;
- (2) Providing information at a periodic eligibility interview;
- (3) Providing information to determine or redetermine that individual's eligibility for benefit under chapter 383, Hawaii Revised Statutes; or
- (4) Providing information to determine or redetermine that individual's liability for repayment of any overpaid benefits.
- (5) Attending a worker profiling orientation or assessment in accordance with section 383-29(a)(6), Hawaii Revised Statutes.

Failure to comply with this subsection shall be considered a failure to file claims in accordance with section 383-29(a)(1), Hawaii Revised Statutes. Unless the individual's failure to comply is excused for good cause pursuant to subsection (j), benefits shall be denied beginning with the week in which the individual failed to comply as instructed and continuing until the conditions of this subsection are met.

(j) An individual's failure to report as scheduled or to provide information to the department for any of the purposes in subsection (i) may be excused for good cause. "Good cause" means:

- (1) Illness or disability of the individual;
- (2) Keeping an appointment for a job interview;
- (3) Attending a funeral of a family member; and

- (4) Any other reason which would prevent a reasonable person from complying as directed. For the purpose of this subsection, "failure to comply" means a failure to report during the regular office hours of the unemployment insurance office on the scheduled day or a failure to provide information by a date specified by the department, except that with respect to an individual scheduled to report at an itinerant point or at a designated agency, failure to report means a failure to report during the hours as instructed on the scheduled day.

(k) In using telephone, or other alternative or remote claims taking procedures to file a claim as prescribed by section 383-29(a)(1), Hawaii Revised Statutes, an individual may be required to establish a personal identification number (PIN) as instructed by the department. The PIN is confidential and the individual shall not disclose that PIN to anyone else unless authorized to do so by the department. Each individual shall be responsible for all claims filed under the individual's social security number and PIN. [Eff. 6/26/81; am 12/31/84; am 3/10/86; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-29(a), 383-32)

§12-5-89 Determinations. (a) An unemployed individual may file an application for a determination of insured status in accordance with this chapter. A claimant may withdraw an application for a determination of insured status at any time prior to the time at which a valid claim is established by the department. If a valid claim is established, the claim may still be withdrawn if benefits have not been paid, unless otherwise prohibited by federal law. Such a request shall be in writing. Upon approval of the request and if the base period employers have previously been notified that the individual has claimed benefits, the department shall mail a copy of the written approval to each employer in the base period of the individual claiming benefits to give notice of the cancellation of the claim. Any determination rendered before the claim is withdrawn shall remain in effect and shall not be voided by the withdrawal of the claim. A determination of disqualification requiring subsequent earnings to requalify the individual shall apply to the weekly benefit amount of the individual's new claim. [Eff. 6/26/81; am 3/10/86; am 9/23/89; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-29, 383-30, 383-32, 383-34, 383-36, 383-40)

§12-5-129 Application. Sections 12-5-133 to 12-5-157 shall govern the department in its administrative cooperation with other states adopting similar rules for the payment of benefits to interstate claimants and the recovery of overpayments. [Eff. 6/26/81; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §383-108)

§12-5-133 Definitions. As used in Sections 12-5-129 to 12-5-157, unless the context clearly requires otherwise:

"Offset" means the withholding of the overpaid amount against benefits which would otherwise be payable for a compensable week of unemployment;

"Overpayment" means an improper payment of benefits, from a state or federal unemployment compensation fund, that has been determined recoverable under the requesting state's law;

"Participating state" means a state which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement;

"Paying state" means the state under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one state;

"Recovering state" means the state that has received a request for assistance from a requesting state;

"Requesting state" means the state that has issued a final determination of overpayment and is requesting another state to assist it in recovering the outstanding balance from the overpaid individual;

"Transferring state" means a state in which a combined wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law. [Eff. 6/26/81; am 10/12/00; am 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-92, 383-108)

§12-5-151 Recovery of overpayment under the Interstate Reciprocal Overpayment Recovery Arrangement; responsibilities of participating states. (a) If an individual has a state or federal overpayment outstanding in a participating state and recovery is requested from another participating state, the requesting state shall perform the following duties:

- (1) Send the recovering state a written request for overpayment recovery assistance which includes:
 - (A) Certification that the overpayment is legally collectable under the requesting state's law;
 - (B) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;
 - (C) A statement as to whether the state is participating in cross-program offset by agreement with the Secretary of Labor; and
 - (D) A copy of the initial overpayment determination and a statement of the outstanding balance.
- (2) Send notice of the request for overpayment recovery assistance to the individual.
- (3) Send to the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state.

(b) Upon receipt of the request for recovery of the individual's outstanding state or federal overpayment, the recovering state shall perform the following duties:

- (1) Offset benefits payable for each week claimed by the individual in the amount determined under state law.
- (2) Provide the individual with a notice of the offset amount.
- (3) Prepare and forward, no less than once a month, a check representing the amount recovered made payable to the requesting state, excepted as provided in section (c) below.
- (4) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits; whichever is later.

- (5) The recovering state shall not redetermine the original overpayment determination.

(c) If the individual elects to file a combined-wage claim and the individual has a state or federal overpayment outstanding in a transferring state, the paying state shall:

- (1) Offset any outstanding overpayment in the transferring state(s) prior to honoring a request from any other participating state under the Interstate Reciprocal Overpayment Recovery Arrangement.
- (2) Credit the deductions against the statement of benefits paid to combined-wage claimants, or forward a check to the transferring state as described in subsection (b)(3).

(d) If the individual withdraws the combined-wage claim after benefits have been paid, the withdrawal shall be honored only if the combined-wage claimant has repaid any benefits paid or authorizes the new liable state to offset the overpayment.

- (1) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable state.
- (2) The recovering state shall:
 - (A) Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim, prior to the release of any payments to the claimant;
 - (B) Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim prior to honoring a request from any other participating state under this arrangement;
 - (C) Provide the individual with a notice of the amount offset; and
 - (D) Prepare and forward a check representing the amount recovered to the requesting state as described in subsection (b)(3).

(e) The recovering state shall offset benefits payable under a state unemployment compensation program to recover any benefits overpaid under a federal unemployment compensation program (as described in the recovering state's agreement with the Secretary of Labor) and vice versa, in the same manner as required under this section, as appropriate, when both the

recovering state and requesting state have entered into an agreement with the Secretary of Labor to implement section 303(a) of the Social Security Act. [Eff. 11/6/06](Auth: HRS §383-92)(Imp: HRS §§383-92, 383-108)

Amendments to chapters 12-5 and the adoption of chapters 12-5-3 and 12-5-136, Hawaii Administrative Rules, on the Summary page dated September 29, 2006 were adopted on September 29, 2006 following public hearing held on September 20, 2006 on Oahu after public notice was given in the Honolulu Advertiser, Honolulu Star-Bulletin, Hawaii Tribune Herald, West Hawaii Today, The Maui News, and The Garden Island on August 20, 2006.

The amendments and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

s/Nelson B. Befitel

NELSON B. BEFITELE, Director
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APPROVED AS TO FORM:

s/Staci Teruya

Deputy Attorney General

LINDA LINGLE
Governor
State of Hawaii

Date:

Filed